

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**September 28, 2005**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Williams** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Galang, Lalwani, Mandal, Mohsin and Williams  
Absent: Azevedo and Garcia  
Staff: Andrade, Carrington, Rodriguez, Williams and Wong

**III  
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
September 14, 2005**

Chair Williams called for approval of the minutes of the Planning Commission meeting of September 14, 2005.

There were no changes to the minutes.

**Motion** to approve the minutes as submitted.

M/S: Lalwani/Galang

AYES: 4

NOES: 0

ABSTENTIONS: 1 (Mandal-absent at the meeting)

**V.  
ANNOUNCEMENTS**

**Tom Williams, Planning and Neighborhood Services Director**, recalled that during the hearing of the Mid-Peninsula senior housing project located at 163 N. Main Street, the commission had requested that the applicant look into locating a second elevator closer to the units in the southern wing and to add a resident drop off and pick up. He was happy to report that Mid-Peninsula was able to accommodate this request.

**Dennis Carrington, Senior Planner**, announced that staff mailed out temporary sign information to business owners and realtors. Included in the packet were drawings, which show examples of legal and illegal signs.

Chair Williams reminded the Commission that they need to place their activities on the Commission's City calendar located on the website.

**VI.  
CONFLICT  
OF INTEREST**

Chair Williams asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

Chair Williams called for approval of the agenda.

**VII.  
APPROVAL OF  
AGENDA**

Staff had no changes.

**Motion** to approve the agenda.

M/S: Lalwani/Galang

AYES: 5

NOES: 0

**VIII.  
CONSENT CALENDAR  
Item Nos. 3, 4 and 6**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes.

Chair Williams opened the public hearing on Consent Item Nos. 3 and 4.

**Dalbar Sanini, Resident**, requested that Item No. 4 (Use Permit Approval Amendment No. UA2005-12) be removed from the consent calendar.

**Vito Scarnecchia, Realtor**, said that he would be happy to answer any questions.

**Close the public hearing**

**Motion** to close the public hearing on Consent Item No. 3.

M/S: Lalwani/Galang

AYES: 5

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3 and 6.

**\*3 TENTATIVE CONDOMINIUM MAP NO. MI2005-2:** A request for approval for a tentative condominium map to subdivide an existing duplex into two units located at 1346 Chewpon Avenue (APN: 088-34-016) Applicant: Bicha Kunhamed and Suprapadh Manohar. Staff Contact: Cindy Hom, (408) 586-3284. (PJ# 3191) *(Recommendation: Approval with Conditions)*

**\*6 GENERAL PLAN CONFORMANCE FOR THE VACATION OF PUBLIC RIGHT-OF-WAY (PORTIONS OF WELLER LANE AND WINSOR STREET:** A request for the vacations of Weller Lane, east of North Main Street and the northern portion of Winsor Street to accommodate the future library on North Main Street. Staff Contact: Steve Erickson, (408) 586-3414. *(Recommendation: Find the partial vacations of Weller Lane and Winsor Street are in conformance with the General Plan)*

**IX. PUBLIC HEARING**

**1. STORMWATER C.3  
GUIDEBOOK  
ADMINISTRATIVE  
PERMIT NO. AD2005-5**

**Dennis Carrington, Senior Planner**, presented a request to amend the City of Milpitas Stormwater C.3 Guidebook that would incorporate new Regional Water Quality Control Board permit requirements into new and redeveloped private and public projects and recommended the Commission approve the resolution adopting the revised Stormwater C.3 Guidebook.

**Commissioner Lalwani** asked which agency did staff work with to prepare the documents. Mr. Carrington replied the Regional Water Quality Control Board.

Commissioner Lalwani asked who are the clients of the C.3 Guidebook and Mr. Carrington said potential developers or anyone that creates impervious surfaces would get a copy of the book.

Commissioner Lalwani asked how would businesses get an update of the book and Mr. Carrington said on a voluntary basis.

Commissioner Lalwani noted that some industries were fined because they were polluting water and asked how does the City follow up. Mr. Carrington noted that staff is supposed to inspect waterways and runoff to see if dumping is occurring.

**Darryl Wong, Principal Civil Engineer**, added that staff does periodic monitoring of different locations and tracks to see if there is a discharge violation.

Chair Williams asked if companies with large parking lots are supposed to take water samples. Mr. Wong said there is a requirement that companies meet certain self monitoring and reporting to the regional board, and for those companies that have material storage that may be of a hazardous nature, they have annual inspections from the Fire Department but those are separate from the C.3 requirements.

**Commissioner Mandal** asked if the policy to reduce 1 acre to 10,000 square feet would apply to a private home in the area. Mr. Carrington said it would only apply to a property that is over 10,000 square feet. Mr. Wong clarified that it applies to commercial projects that are 10,000 square feet or more and will come into effect of August 2006. Single-family homes are exempted from the C.3 requirements.

Chair Williams opened the public hearing.

There were no speakers from the audience.

**Motion** to close the public hearing.

**Close the public hearing**

M/S: Lalwani/Mandal

AYES: 5

NOES: 0

**Motion** to approve Stormwater C.3 Guidebook Administrative Permit No. AD2005-5.

M/S: Lalwani/Mandal

AYES: 5

NOES: 0

## **2. URBAN RUNOFF GENERAL PLAN AMENDMENT NO. GP2005-5**

**Dennis Carrington, Senior Planner**, presented a proposed amendment to the Milpitas General Plan to amend Chapter 4.4, Water Quality and Conservation and Chapter 4.9 d, Open Space/Conservation Principles and Policies/Water Quality and Conservation of the Open Space and Environmental Conservation Element and recommended that the City Council amend the Open Space and Environmental Conservation Element of the General Plan as shown in Attachment A.

**Vice Chair Galang** asked how do you treat runoff before it is discharged from the site. Mr. Carrington said that a bio swale treats the water before it is discharged.

Chair Williams opened the public hearing.

There were no speakers from the audience.

**Motion** to close the public hearing.

**Close the public hearing**

M/S: Galang/Mohsin

AYES: 5

NOES: 0

**Motion** to approve Urban Runoff General Plan Amendment No. GP2005-5, recommending that the City Council amend the Open Space and Environmental Conservation Element of the General Plan as shown in Attachment A.

M/S: Lalwani/Galang

AYES: 5

NOES: 0

**3. USE PERMIT  
APPROVAL  
AMENDMENT NO.  
UA2005-12**

Mr. Williams presented a request to add alcohol sales of all types to an existing grocery and video rental store, located at 102 South Abel Street (APN: 022-24-045), zoned Mixed Use (MXD) and recommended approval with conditions.

Commissioner Mandal asked if there is another liquor store within the same square and Mr. Williams said no.

Chair Williams invited the applicant to speak.

**Dalbir Saini, Applicant** at 102 S. Abel Street, is concerned about special condition no. 2 which reads below:

2. *There shall be no consumption of alcohol on the premise or surrounding area. If, at anytime there are complaints (inclusive of loitering) at the premises, the applicant shall submit application to the Planning Division for use permit review by the Planning Commission. If the Planning Commission review requires a public hearing, the applicant shall bear the costs of all materials and fees associated with the hearing. (P)*

Mr. Saini said he does not agree with this condition because he cannot control what people do outside of his business. He would also like to extend his hours from 10 p.m. to 11 p.m. weekdays and close at midnight on Fridays and Saturdays.

Commissioner Lalwani asked how does it work for other businesses about people loitering in the parking lot. Mr. Williams said it is a standard condition especially in a shopping center. Staff's goal is to make sure that nobody drinks in the parking lot or drinks in the surrounding walkways and to help enforce drinking in the parking lots. If it becomes an issue, then staff would address this with the business owner or the property owner and staff cannot resolve the issue, then the permit would have to come back to the Commission.

Commissioner Lalwani felt it was unfair to businesses if they get into trouble for customers loitering in the parking lot and asked how is this regulated. Mr. Williams said they would call the police department if someone were drinking in the parking lot.

Commissioner Mandal asked if the police department was involved in reviewing this application and Mr. Williams said yes.

**Commissioner Mohsin** asked what stores have a permit and up to what times and how is that regulated. Mr. Williams said that the limit is 10 p.m. unless the Commission says otherwise. Staff did research and most stores close at 9 or 10 p.m. On Main Street, Milpitas Liquor store operates until 1 or 2 a.m. and have been in business for 40 years.

Mr. Saini said he used to run a liquor store between 1987 and 1990, and he used to stay open late.

Commissioner Lalwani said she visits Abel Plaza frequently and it is a very safe place. The Plaza is usually empty around 10 p.m. however if there is a banquet at the Chinese restaurant it is very busy.

Vice Chair Galang felt that if there is a crime in the area, he doesn't feel the applicant is responsible due to alcohol issues. Mr. Williams said if there is any criminal activity then the police department gets involved. However if there is a nuisance violation, then Code Enforcement would get involved depending on the number of complaints and violations.

Commissioner Mandal asked what are the normal closing hours of other businesses in the plaza. Mr. Williams pointed out that some businesses close at 9 p.m. and others at 10 p.m.

Commissioner Mandal said he agrees with Commissioner Lalwani that the plaza is family oriented and would like to keep Milpitas that way.

Chair Williams opened the public hearing.

**Frank DeSmidt, Chamber of Commerce**, said these issues come up from time to time about problems occurring in the parking lot. The City passed a loitering ordinance, which states that the landowner posts a sign that states no loitering in the parking lot. When the individuals hang out in the parking lot whether they are customers or not, the tenants of the shopping center can ask them to leave if not, then they will call the police. The police will come and ask them to leave or the police can cite them for loitering.

**Motion** to close the public hearing.

**Close the public hearing**

M/S: Mohsin/Mandal

AYES: 5

NOES: 0

Chair Williams said the applicant is concerned with the language of condition no. 2 and asked if it could be interpreted another way. Mr. Williams said what happens outside the store is still considered private property. He felt that anytime the City can get additional help that could have a proliferation of a nuisance problem and work with the business community to help and be a partnership, it is always helpful. The Commission might consider bringing back the item in six months to review and check to see if there are any complaints.

Chair Williams said he can agree with staff's recommendation for a six-month review and would consider two six-month reviews because of the location. He also has no problems with the hours the applicant is requesting and felt the language of condition no. 2 is adequate.

Commissioner Mandal said he agrees with Chair Williams and asked if the property owner has a security guard to watch the businesses in the complex. Mr. Williams said staff could do that, but because this is a use permit for the business and not for the plaza he would not recommend a security guard at this point in time. However, if it seems to become a problem during the review period, then that could be something the city could invoke onto the property owner.

Commissioner Lalwani asked staff if there were any complaints before with the previous liquor store in the plaza. She also noted she has no problem with the requested hours.

Chair Williams asked Mr. Saini how was his experience with running the previous liquor store. Mr. Saini said that the liquor store did not have any problems and he would stay open until 11 p.m. and the reason why the store closed down is because the owner had health problems. He also agreed with having a security guard however felt the property owner should pay for it.

Commissioner Mohsin said if there hasn't been any incidents the business owner could be accommodated with the extended hours.

Vice Chair Galang said he does not feel comfortable extending the hours until he is able to look at a police report of previous activity.

Commissioner Mandal said by looking at what staff has recommended, felt that if all businesses are closing at 10 p.m. doesn't see why the liquor store should be extended until 11 p.m.

Commissioner Lalwani asked what would be the closing hours of the new restaurant coming in. Mr. Williams said he doesn't know but believes the previous restaurant was open until 10 p.m.

Mr. Saini said some of the restaurants in the plaza would stay open until midnight on Friday's because of parties.

**Motion** to approve Use Permit Approval Amendment No. UA2005-12 and to extend the weekday hours from 10 to 11 p.m. and to midnight on Friday and Saturdays and to have two six month reviews.

M/S: Lalwani/Mohsin

AYES: 3 (Lalwani, Mohsin, Williams)

NOES: 2 (Galang and Mandal)

## **X. NEW BUSINESS**

### **4. ABEL STREET/S. MAIN STREET MEDIAN ISLAND PLAN LINE STUDY & TRAFFIC IMPACT FEE**

**Jaime Rodriguez, Traffic Engineer**, presented a new Capital Improvement Project to identify the appropriate configuration of new landscaped median islands on Abel Street between Capital Avenue and S. Main Street and S. Main Street between Abel Street and Montague Expressway, including an extensive community outreach process and a proposed traffic impact fee for new development projects. He recommended to the City Council to approve the proposed development impact fee. Mr. Rodriguez also noted for the record that staff submitted a memorandum to the Commission with a revised attachment.

Commissioner Lalwani said she got confused about the location of the medians. Mr. Rodriguez pointed out that the medians would be located on Abel Street between Capital Avenue and S. Main Street and S. Main Street between Abel Street and Montague Expressway.

Chair Williams recalled that the Commission does not get involved with the fees and felt that it should be left up to Council.

Chair Williams said from experience, landscape medians cause problems because it is hard to make a left turn and instead you have to make a right turn and then make a u-turn. Felt this could be a problem for residents, businesses and commuters. Mr. Rodriguez said the project is part of a bigger picture of Main Street. Staff will be going to Council to provide a speed study of all of N. and S. main street and will be requesting to lower the speed of S. Main Street between Montague and Abel to 35 mph based off of the current speeds and studies.

Chair Williams asked if the city could put the speed limit on the surface of the street in big numbers. Mr. Rodriguez said that staff is looking at doing that on Abel Street and other areas of the City.

Commissioner Mandal asked if this project is part of the transit area plan and Mr. Rodriguez said that it is separate.

Mr. Carrington said that the transit area plan is east of Penitencia Creek and does not go further south.

Commissioner Mandal asked if the landscaping works with the transit area plan. Mr. Rodriguez said it is changing the character of the area to promote pedestrian friendly streets.

Vice Chair Galang asked staff to clarify the traffic impact fees. Mr. Rodriguez said there are two fees. One is the Midtown traffic fee and the other is the Montague Expressway impact fee. These fees are paid to help for future permits that are going to be happening in the corridor.

Vice Chair Galang asked if the KB Home improvements are included as part of the cost breakdown. Mr. Rodriguez explained that the fee is only for the median islands. There would not be a requirement for any developer along Main Street to put in new streetlights.

Vice Chair Galang asked if it is a common practice for new developers to share the money for improvements for the City. Mr. Williams said that in terms of the development impact fee, it is generated based on each trip that the development is going to create. There is a direct relationship between the impact of a particular development and improvements. This project is in concept and looking for general direction. This will come back to the Commission for an in-depth review.

Vice Chair Galang asked who would be responsible for maintaining the streetscape. Mr. Williams said that each project in Midtown have development agreements and could have a maintenance agreement but at the end of the day it falls back on the Public Works department. Mr. Rodriguez added that the City approved a new tax on any new development that occurs within the City beginning with the KB development that will go towards a maintenance fund for any new development that occurs South of Great Mall Parkway.

Commissioner Mohsin asked if the \$150,000 is just for the study and Mr. Rodriguez said yes.

Commissioner Mohsin asked if the developers will have a separate fee and Mr. Rodriguez said the fee is all-inclusive.

Chair Williams said the Midtown light fixtures have a very nice design.

**Motion** to recommend to Council approval of the Abel Streets/ Main Streets/S. Main Street Median Island Plan Line Study and Traffic Impact Fee to Council and to include all of the Commissions recommendations and to recommend the \$144.00 fee which includes the lighting.

M/S: Mandal/Galang

AYES: 5

NOES: 0

**XI.  
ADJOURNMENT**

The meeting was adjourned at 7:53 p.m. to the next regular meeting of October 12, 2005.

Respectfully Submitted,

Tom Williams  
Planning and Neighborhood  
Services Director

Veronica Rodriguez  
Recording Secretary